

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 377 Limitations on Actions other than for the Recovery of Real Property

SPONSOR(S): Leek

TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		Stranburg	Bond
2) Agriculture & Property Rights Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

A statute of limitations and a statute of repose both limit the time period with which a person may file a lawsuit. A statute of limitations generally begins when the cause of action accrues and bars the lawsuit from being filed after a set period of time. A statute of repose begins at the occurrence of a specified event and extinguishes the right to file a lawsuit altogether. Where both apply, the action is barred when the first limitations period has run.

Under current law, a cause of action founded on the design or construction of a building is subject to a 4 year statute of limitations and a 10 year statute of repose. The statute of limitations and the statute of repose start at the latest date of the following: the date of actual possession; the date a certificate of occupancy is issued; the date construction, if not completed, is abandoned; or the date the contract is completed or terminated. The statute of limitations for a latent defect begins when the defect was or should have been discovered, but the statute of limitations may not extend beyond the statute of repose. The statute of repose thus may limit a cause of action for a latent defect even if the injured party has no knowledge of the latent defect.

A recent court decision found that a construction contract is complete upon final payment. For the purposes of both the statute of limitations and the statute of repose, this bill provides that a construction contract is considered complete on the last day that the contractor, architect or engineer furnishes labor, services, or materials related to the contract, excluding those furnished to correct a deficiency in previously performed work or materials supplied.

The bill provides that a cause of action that would be barred by this change in the definition of the completion of the contract may be commenced within one year after the effective date of the bill.

The bill does not appear to have a fiscal impact on state or local governments.

The bill has an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

A statute of limitations is an absolute bar to the filing of a lawsuit after a date set by law. Laws creating statutes of limitations specify when the time period begins, how long the limitations period runs, and circumstances by which the running of the statutes may be tolled (suspended). A statute of limitations usually begins to run when a cause of action accrues (generally, when the harm occurs).

A statute of repose is similar to a statute of limitations. A statute of repose bars a suit after a fixed period of time after the defendant acts in some way, even if this period ends before the plaintiff has suffered any injury. Although phrased in similar language, a statute of repose is not a true statute of limitations because it begins to run not from accrual of the cause of action, but from an established or fixed event, such as the delivery of a product or the completion of work, which is unrelated to accrual of the cause of action.¹

Moreover, unlike a statute of limitations, a statute of repose abolishes, or completely eliminates, the underlying substantive right of action, not just the remedy available to the plaintiff, upon expiration of the period specified in the statute of repose.² Courts construe a cause of action rescinded by a statute of repose as if the right to sue never existed. Statutes of repose are designed to encourage diligence in the prosecution of claims, eliminate the potential of abuse from a stale claim, and foster certainty and finality in liability.³

Section 95.11(3)(c), F.S., currently provides that actions founded on the design, planning, or construction of an improvement to real property are subject to a four-year statute of limitations. The four-year time period of the statute of limitations begins to run from the latest date of the following events:

- Actual possession by the owner;
- Issuance of a certificate of occupancy;
- Abandonment of construction if not completed; or
- Completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.

However, in actions involving a latent defect, the four-year statute of limitations does not begin to run until the defect is discovered or should have been discovered with the exercise of due diligence.⁴ Latent defects are generally considered to be hidden or concealed defects which are not discoverable by reasonable and customary inspection, and of which the owner has no knowledge.⁵

In addition to this four-year statute of limitations, there is a 10-year statute of repose for an action founded on the design, planning, or construction of an improvement to real property. Such actions must be commenced, regardless of the time the cause of action accrued, within 10 years after the date of the above listed events, whichever is latest.⁶ Thus, the statute of repose may bar an action even though the injured party is unaware of the existence of the cause of action.

¹ *Kush v. Lloyd*, 616 So.2d 415 (Fla. 1992).

² *Beach v. Great Western Bank*, 692 So.2d 146 (Fla. 1997)

³ See, e.g., *Lamb By and Through Donaldson v. Volkswagenwerk Aktiengesellschaft*, 631 F. Supp. 1144, 1148 (S.D. Fla. 1986), judgment aff'd, 835 F.2d 1369 (11th Cir. 1988).

⁴ s. 95.11(3)(c), F.S.

⁵ *Alexander v. Suncoast Builders, Inc.*, 837 So. 2d 1056, 1058 (Fla. 3d DCA 2003).

⁶ s. 95.11(3)(c), F.S.

In 2013, the Fifth District Court of Appeal was presented with the issue of what constituted "the date of 'completion...of the contract' "⁷ for the purpose of determining the beginning of the statute of repose pursuant to s. 95.11(3)(c), F.S. The court held that the contract is complete for the purposes of s. 95.11(3)(c), F.S., on the date final payment is made.⁸ It reasoned that

[c]ompletion of the contract means completion of performance by both sides of the contract, not merely performance by the contractor. Had the legislature intended the statute to run from the time the contractor completed performance, it could have simply so stated. It is not our function to alter plain and unambiguous language under the guise of interpreting a statute.⁹

The court's definition of completion of the contract subjects the triggering of the statute of repose period to particular actions of the injured party. This differs from the normal operation of a statute of repose, which is usually based on the actions of the injuring party.

Effect of Proposed Changes

This bill amends s. 95.11(3)(c), F.S., to define the date of the completion of the contract. It provides that the completion of the contract for purposes of the statute of repose and statute of limitations for design, planning, or construction defects is the last day during which the professional engineer, registered architect, or licensed contractor furnishes labor, services, or materials, excluding those furnished to correct a deficiency in previously performed work or materials supplied.

The bill provides that the amendment to s. 95.11(3)(c), F.S., applies to any action commenced on or after July 1, 2017, regardless of when the cause of action accrued. Therefore, a party whose cause of action accrued prior to the changes in this bill, but who commences the action after July 1, 2017, could be barred from bringing the action by the shortening of the statute of repose resulting from the change in the definition of the completion of the contract. The bill provides that in such circumstances, if the action would not have been barred under the court's definition of the completion of the contract, the action may be commenced before July 1, 2018. If the action is not commenced by July 1, 2018, and is barred by the new definition of the completion of the contract, then the action will be forever barred.

The bill also reenacts s. 627.441(2), F.S., for the purposes of incorporating the amendment to s. 95.11(3)(c), F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 95.11, F.S., relating to limitations on actions other than for the recovery of real property.

Section 2 provides for applicability.

Section 3 reenacts s. 627.441(2), F.S., relating to commercial general liability policies; coverage to contractors for completed operations.

Section 4 provides an effective date of July 1, 2017.

⁷ *Cypress Fairway Condominium v. Bergeron Const. Co. Inc.*, 164 So. 3d 706,707 (Fla. 5th DCA 2015).

⁸ *Id.* at 708.

⁹ *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state revenues.

2. Expenditures:

The bill does not appear to have an impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

The bill does not appear to have an impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create rulemaking authority or a need for rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a